the appointment of receivers for its property by the federal circuit court. Then the attorney-general of New York, in the course of a suit to dissolve the corporation pursuant to statute, because of its insolvency for a year, moved for the appointment of receivers for its property. A statute permits the appointment in a dissolution suit. *Held*, that receivers will be appointed, but they are to request the federal court to relinquish control, and are not to molest the federal receivers. *People* v. *N. Y. City Ry.*, 107 N. Y. Supp. 247 (Sup. Ct.). See NOTES, p. 279.

SALES — IMPLIED WARRANTIES — OBLIGATIONS OF VENDOR OF STOCK. — The appellant purchased from the appellee shares in a certain mining corporation. The corporation proved to be a *de facto* one, and the shares part of an illegal over-issue. The appellant sought to rescind the sale. *Held*, that the sale is valid, since the vendor of stock impliedly warrants only his title to the stock and its genuineness. *Burwash* v. *Ballou*, 82 N. E. 355 (Ill.).

The vendor of stock impliedly warrants his ownership in the stock certificate, that it is genuine, and that he is authorized to transfer the title thereto. If the vendee desires further protection, he must ordinarily exact an express warranty. *Higgins* v. *Ill. Trust and Savings Bank*, 193 Ill. 394. Since the vendor and vendee are presumably on an equal footing, there seems to be no element of unfairness which demands the implication of further warranty that the stock sold is stock of a *de jure* corporation. *Harter* v. *Eltzroth*, 111 Ind. 159. Where there is a contract for the sale of bonds of which there is only an unauthorized issue outstanding, delivery of bonds of such issue is sufficient. *Otis* v. *Cullum*, 92 U. S. 447. Where, however, there are both authorized and unauthorized issues, delivery of bonds of the illegal issue, though in good faith, is not a sufficient compliance with the terms of the contract, since it is presumed that the vendee contracted for bonds of the valid issue. *Meyer* v. *Richards*, 163 U. S. 385. The same rule would seem to apply to issues of stock, though the present case fails to notice the distinction. *Cf. Lincoln* v. *Express Co.*, 45 La. Ann. 729; *contra*, *People's Bank* v. *Kurtz*, 99 Pa. St. 344.

STATES — VALIDITY OF STATE BOND STOLEN AFTER REDEMPTION BEFORE MATURITY. — A statute authorized an issue of negotiable state bonds, redeemable before maturity, and provided that all bonds redeemed should be destroyed. A bond which had been redeemed, but not cancelled or destroyed, was stolen and came into the possession of the relator, a holder in due course. *Held*, that *mandamus* lies to compel the state treasurer to redeem the bond again. *Ehrlich* v. *Jennings*, 58 S. E. 922 (S. C.). See NOTES, p. 282.

STATUTES — INTERPRETATION — REQUIREMENT OF KNOWLEDGE IN CONVICTIONS UNDER THE SAFETY APPLIANCE ACT. — Section 2 of the Safety Appliance Act, 27 Stat. at L. 531, makes it unlawful for any common carrier "to haul, permit to be hauled or used on its line any car used in moving interstate traffic" not equipped with workable automatic couplers. In an action thereunder, the government proved defects in the couplers without proving the defendant's knowledge thereof. *Held*, that to sustain a conviction, the evidence must prove beyond a reasonable doubt that the carrier either had discovered the defects, or could have discovered them by the exercise of the utmost care. *United States* v. *Illinois Cent. R. R. Co.*, 156 Fed. 182 (Dist. Ct., W. D. Ky.); *contra*, *United States* v. *C., B. & Q. Ry. Co.*, 156 Fed. 180 (Dist. Ct., D. Neb.).

So far as it is necessary to prevent injury to persons or property, the regulation and control of railroads is within the police power of the states. *Jones* v. *Alabama & Vicksburg Ry. Co.*, 72 Miss. 22. The purpose of the Safety Appliance Act, as set forth in the title, is to promote the safety of employees and travellers. It is analogous to an exercise of state police power. No *mens rea* is required to convict for offenses against police regulations involving no moral turpitude. *Com.* v. *Wentworth*, 118 Mass. 441. The present case can therefore be supported only by reading into the act a requirement of knowledge. It is settled that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature. See

Johnson v. *Southern Pacific Co.*, 196 U. S. 1, 17. On the other hand, the operation of a statute has been restricted within narrower limits than its words imported when the court considered that the literal meaning would extend to cases which the legislature never intended to include. *United States* v. *Kirby*, 7 Wall. (U. S.) 482. This rule, at best dangerous, is inapplicable here, as Congress may have desired to procure a high degree of care by imposing absolute responsibility. And the weight of authority is against the present case. *United States* v. *Southern Ry. Co.*, 135 Fed. 122.

TAXATION — COLLECTION AND ENFORCEMENT — ACTION AT LAW. — The United States brought *indebitatus assumpsit* to collect a sum due under the Spanish War Tax, which provided for a fine in case of non-payment. *Held*, that the action does not lie. *United States* v. *Chamberlain*, 5 The Law 202 (C. C. A., Eighth Circ., Oct. 17, 1907). See NOTES, p. 283.

TAXATION — GENERAL LIMITATIONS ON TAXING POWER — UNEQUAL TAXATION OF BANK SHARES AND OTHER MONEYED CAPITAL. — A New York statute imposed a tax of one per cent on the value of the stock of all banks organized under the laws of the state or of the United States, without any deduction for the personal indebtedness of the owners. In the case of taxes on all other personalty such deduction was allowed, but the tax rate was more than twice as high. *Held*, that there is no discrimination against national bank shares. *People ex rel. Bridgeport Savings Bank* v. *Feitner*, 120 N. Y. App. Div. 838.

The federal statutes provide that a state tax on national bank stock must not be at a greater rate than that upon other "moneyed capital." U. S. REV. STAT. § 5219. This is to prevent discrimination tending to discourage investments in national bank shares. *First Nat'l Bank* v. *City of Richmond*, 39 Fed. 309. But moneyed capital only includes money employed where the object of the business is the making of profit by its use as money. *Mercantile Bank* v. *New York*, 121 U. S. 138. Consequently, if the tax is void it is solely because the rate is higher on the stock of a banking corporation than on other moneyed capital, and this is a question of fact. In considering it the whole tax system must be considered rather than an exceptional effect in a peculiar case. *Pelton* v. *Nat'l Bank*, 101 U. S. 143. A difference in name or method of assessment is not a discrimination unless there is in fact a greater burden on national banks. *Nat'l Bank of Wellington* v. *Chapman*, 173 U. S. 205; *Van Slyke* v. *State*, 23 Wis. 655. The conclusion of the court seems justified in view of the fact that the small portion of moneyed capital not in bank stock and from which a deduction for debt is allowed pays a much higher rate than bank shares.

TAXATION — PARTICULAR FORMS OF TAXATION — STATE INHERITANCE TAX ON STOCK OF CORPORATIONS INCORPORATED IN SEVERAL STATES. — A New Hampshire testatrix bequeathed stock in a corporation incorporated in Massachusetts and in other states. *Held*, that the value of this stock for the purpose of the succession tax to be paid in Massachusetts is limited to the value of the franchise and property in Massachusetts which it specifically represents. *Kingsbury* v. *Chapin*, 82 N. E. 700 (Mass.).

This decision follows a recent New York decision commented on in 20 HARV. L. REV. 313.

TAXATION — PURPOSES FOR WHICH TAXES MAY BE LEVIED — STATE AID TO DISABLED FIREMEN. — A South Carolina statute provided that fire insurance companies doing business within the state should pay a percentage on local premiums to the state treasurer for the benefit of disabled members of fire departments. *Held*, that the statute is unconstitutional. *Aetna Fire Ins. Co.* v. *Jones*, 59 S. E. 148 (S. C.). See NOTES, p. 277.

TRESPASS TO REALTY — WHAT CONSTITUTES A TRESPASS — FORCIBLE EVICTION OF TRESPASSER BY OWNER. — A and B were adjoining landowners. Through an innocent mistake, A built a house partly on his own and partly on B's land. Five years thereafter B forcibly entered upon A, sawed the house in